IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

SECOND APPEAL NO. 84 OF 2005

Shri Babani Fotu Gaude
(since deceased through his LR's)

1. Premavati Babani Gaude,
   wife of Babani Fotu Gaude,

2. Sadanand Babani Gaude,
   Son of Babani Fotu Gaude,

3. Sangeeta Sadanand Gaude,
   wife of Sadanand Babani Gaude,

4. Vasudev Babani Gaude,
   Son of Babani Fotu Gaude,

5. Prateema Vasudev Gaude,
   Wife of Vasudev Babani Gaude,

6. Ganpat Babani Gaude,
   Son of Babani Fotu Gaude,

7. Gautami Ganpat Gaude,
   Wife of Ganpat Babani Gaude,
   All major in age, resident of Sangao,
   Priol, Ponda Goa.

8. Mangal Dattu Gaude,
   Daughter of Babani Fotu Gaude,

9. Dattu Babuso Gaude,
   Son-in-law of Babani Fotu Gaude,
   Both resident of Nanus, Usgao,
   Ponda, Goa.

10.Vimal Shankar Khorginkar
Daughter of Babani Fotu Gaude,

11.Shankar Khorginkar,
Son-in-law of Babani Fotu Gaude,
Both resident of Khodgine, Surla,
Bicholim, Goa.

12.Geeta Suryakant Gaude,
Daughter of Babani Fotu Gaude,

13.Suryakant Purso Gaude,
Son-in-law of Babani Fotu Gaude,
Both resident of Sangao, Priol,
Ponda, Goa.

14.Vishnu Fotu Gaude,
Resident of House No. 725,
Sangao-Ward, Priol, Goa. .... Appellants

Versus

Prabhaker Vithal Sangaokar,
Major in age, married, Indian
National, Resident of Sangao-Ward,
Priol, Ponda, Goa. .... Respondent

Shri Ulhas K. Tari, Advocate for Appellants.

Shri S.D. Lotlikar, Sr. Advocate with Ms. Shambhavi Rao, Advocate for the Respondent.

CORAM : **P. V. KAKADE, J.**

DATE : **26th September, 2006**

ORAL ORDER

Heard the learned Counsel for both the parties. Perused the record.

2. The appellant has preferred this appeal against the judgment and order passed by the Ad Hoc Additional District Judge, Panaji, allowing the appeal and setting aside the judgment and order passed by the trial Court dated 14/05/2004, dismissing the plaintiff's suit.

3. The plaintiff who claimed to be the owner in possession of 1/6th part of property "SANGAON" survey no. 184/0 of Village Priol comprising plots bearing nos. 4, 14 and 23. Plot no. 4 being a suit plot alleged that the defendants who are having residential house therein admeasuring 12 x 5 sq. mts., on 22/02/1997 trespassed into plot no.4 and extended house on its Eastern side by 7 x 6 mts., thereby infringing plaintiff's proprietary rights in the suit plot, and hence suit for perpetual and mandatory injunction came to be filed.

4. The suit was contested by the defendants, inter alia, denying the allegations made by the plaintiff raising various technical objections. It was also averred that plaintiff was not the owner of 1/6th part of the property and the property was divided by two rivulets in three portions. The said three portions were named differently and belonged to Vetal Maharudra Devasthan of Mulgao and they were the tenants of the entire property. On such and other grounds, the suit was sought to be dismissed with costs. The trial Court, on the basis of available evidence and pleadings, adjudicated the dispute and came to the conclusion that the plaintiff had failed to prove his ownership title to the suit property and dismissed the suit. The appeal was preferred to the District Court and the learned District Judge, after hearing both the parties came to the conclusion that the finding recorded by the learned trial Judge were misconceived and were liable to be set aside and, accordingly, appeal came to be allowed decreeing the suit. Hence the present appeal is filed by unsuccessful defendants.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. All the questions sought to be raised are pertaining to the factual aspects. The factual evidence on

record which on perusal of the judgment of the lower appellate Court is found to be properly appreciated in proper perspective and, therefore, would brook no interference.

6. At one stage, the learned Counsel for the appellants submitted that they were tenants in the suit property and the lower appellate Court had recorded finding that they were not tenants in the property and, therefore, such recording of finding was without jurisdiction. However, on critical perusal of the relevant aspect of the judgment of the lower appellate Court, it is apparent that the Additional District Judge was aware of the fact that there was proceeding pending before the Mamlatdar for declaration that the defendants are tenants of suit property and the plaintiff as well as Devasthan are parties to said proceedings. In view of this position, it was found that though the appellant was Mundkar in the property, issue of alleged tenancy of the defendants was not adjudicated. It is true that last sentence of para 17 of the judgment of the lower appellate Court is misleading, however, there is no dispute whatsoever that lower appellate Court was aware of the fact that he was having no jurisdiction to decide the question of tenancy as the matter was sub judice before the competent Court i.e. Mamlatdar in that regard.

7. Once we reach this position, the remaining issues sought to be raised are seen to be issues of fact and, therefore, would brook no interference, especially when the lower appellate Court's judgment is seen to have properly appreciated the entire evidence on record. Hence, I hold that appeal is devoid of any merits and deserves to be dismissed with no orders as to costs. Consequently, Civil Application No. 189 of 2005 also stands dismissed with no orders as to costs.

P. V. KAKADE, J.

NH